

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

CITIZENS FOR ALTERNATIVES TO  
RADIOACTIVE DUMPING, et al.,

Plaintiffs,

vs.

Civ. No. 99-321 JC/WWD ACE

BILL RICHARDSON, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendants' Motion for Protective Order Filed (ACE) June 27, 2000. Defendants seek to preclude certain discovery, including depositions, requests for production and interrogatories, which Plaintiffs seek to obtain from Defendants. Defendants contend that such discovery is not proper under the Administrative Procedures Act (APA), which is the only vehicle for reviewing the remaining NEPA claim Plaintiffs are making against Defendants. Defendants also claim that judicial review of agency action under the APA must be processed as an appeal applying the Federal Rules of Appellate Procedure which do not permit discovery.

In their response (denominated "Reply" by plaintiffs) Plaintiffs allege that Defendants relied on false or inaccurate information in connection with environmental impact statements prepared for the WIPP project. Additionally Plaintiffs seek discovery related to their proposed Third and Fourth Amended Complaints, the filing of which has yet to be approved by the Court.

The authority cited by the parties indicates that the matters being questioned in the complaint presently before the Court normally should be determined on the basis of the record created in the proceedings held under the Administrative Procedures Act. Plaintiffs do not show that the administrative record here involved is incomplete or that it fails to disclose the factors considered by the Department of Energy in making the decision which this action attempts to challenge. Bald allegations of bad faith in complaints yet to be filed are not a sound basis for permitting the extensive discovery sought by Plaintiffs. In summary, Plaintiffs have failed to demonstrate either that the discovery sought is necessary or that it would be proper under the circumstances here presented.

**WHEREFORE,**

**IT IS ORDERED** that the Federal Defendant's Motion for Protective Order [Docket #96] be, and it is hereby, **GRANTED**; and the discovery sought by Plaintiffs, as detailed in the instant motion and the attachments thereto, shall not be allowed.

A handwritten signature in black ink, appearing to read "William B. Deaton", is written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE